

REMARKS/AMENDMENTS

Applicant would first like to thank the Examiner for his comments made during the previously held interview. The Examiner's willingness to work toward the common goal of the allowance of this application during that interview is greatly appreciated.

This paper addresses the issues raised in the Office Action made Final mailed 28 October 2005. This amendment is submitted in compliance with the guidelines of the revised amendment practice. See 1267 Off. Gazette 106.

Claims 1, 3, 4, 6, 7, 10, 12, 13, and 15-22 are currently pending. All pending Claims were rejected under 35 U.S.C. § 103(a) as being unpatentable in light of Rylander (USPN 4749011) in view of Steinmetz (USPN 5884454) and Mezzanotte (USPN 3736973). As set out below, Applicant respectfully submits that the present invention as claimed is patentable over the cited art and urges the Examiner to reconsider the pending rejections.

Claims Rejection - 35 U.S.C. § 103(a)

The Examiner has rejected all pending Claims under 35 U.S.C. § 103(a) as being unpatentable in light of Rylander (USPN 4749011) in view of Steinmetz (USPN 5884454) and Mezzanotte (USPN 3736973). Zysman in view of Swartzentruber. It is submitted that these references do not render these Claims as unpatentable. The combination of these references is not proper, nor if they are properly combined would they produce the invention as set forth in the pending Claims. Reconsideration is respectfully requested.

In making this rejection, the Examiner indicated that Rylander teaches a flexible plastic sheeting but fails to teach the inclusion of at least one memory retention unit, as set forth in the pending claims. However, according to the Examiner, Steinmetz teaches the use a resilient rod made from metal to be imbedded in a trash bag and the motivation to combine these teachings is found in Mezzanotte. Applicant respectfully submits that there is not motivation or teaching to combine Rylander, Steinmetz and Mezzanott, and if such were combines the result would not render the claimed invention as obvious. Reconsideration is requested.

Regarding the combination of Rylander with Steinmetz, it is respectfully submitted that there is no motivation to combine these references. Rylander is directed toward an insert that is placed within the bag whereas Steinmetz is directed toward weaving a rod through the top edge of the bag. There is no discussion, teaching or motivation to include a rod that is woven within the bag in Rylander plane, nor is there such discussion, teaching or motivation to include a flexible panel with the Steinmetz rod.

Moreover, the combination of Rylander with Steinmetz would render the Rylander reference inoperable and could change of principle of operation of Steinmetz. The Rylander device is a flat panel that fits within a flexible bag. This panel is not secured to the bag, nor could it be secured to the bag as taught by Steinmetz, i.e. by being woven into the bag. To modify the Rylander panel such that it could be woven into the bag would render its inoperable in its ability to be readily removed from the bag.

The Steinmetz rod is designed to be woven into the bag, either through a hem or the bag itself. To place the Steinmetz rod inside the Rylander panel would fundamentally change the operation of the Steinmetz rod. It would not be capable of being woven or inserted into the bag. Thus, there is no motivation to combine these references. See, MPEP 2143.01. ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.")

Further, the affidavit of Mr. Nick Rylander is attached to this response in support thereof. As the named inventor in the Rylander reference, Mr. Rylander would be considered a person skilled in the relevant art. As set out in his declaration, he deems "it not at all obvious to combine the designs of Rylander and Steinmetz." This opinion is based on the differences between the Steinmetz rods and the Rylander panel, which are set forth above. Thus, the actual inventor of the Rylander reference, after reviewing the Steinmetz reference, has concluded that it would not be obvious to combine his reference with Steinmetz.

With respect to the Mezzanotte reference, it is respectfully submitted that such reference is non-analogous art and thus is not a proper reference. Pursuant to MPEP 2141.01(a), the cited reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned art. In this matter, Mezzanotte is neither as should be relied upon. First, Mezzanotte is not within the same classification as either the Rylander or Steinmetz references. This is some evidence of being non-analogous.

Further, Mezzanotte and the present invention are directed toward different fields of endeavor. While Mezzanotte, is directed toward the field of radial tires, the present invention is directed toward the field of lawn and trash bags. Radial tires include multiple metal cords which according to Mezzanotte, the metal cords therein are meant to be rigid, i.e. stiff, not bending. (Col 3, lines 6-7). It is submitted that when one of skill in the art, seeking to solve

the problem of holding a trash or lawn bag open would not be expected or motivated to look toward the radial tire art.

Moreover, Mezzanotte does not teach the use of a flexible metal. In fact, it teaches just the opposite, i.e. it teaches away from the use of a flexible metal within a polymer. Mezzanotte is directed toward the radial tire art. As stated in Mezzanotte, the sidewalls of radial tires have more flexibility than conventional tires which create instability. (Col. 1, Lines 9-18). To "eliminate this drawback" Mezzanotte teaches the creation of a sidewall stiffening structure. As described by Mezzanotte, "when the tire requires a strong increase in the degree of transversal rigidity of the sidewalls, it is preferable to use additional strips of crossed cords." (Col. 1, Lines 48-50).


Clearly, Mezzanotte does not teach or suggest the use of flexible metal, and in fact teaches away from such. In the claimed invention, flexible material is disposed within a panel. This flexible material has sufficient memory characteristics to return the panel to a flat configuration. The Mezzanotte cords are not designed, thus not taught, to be flexible. They are taught, however, to be stiff and not flexible. This is done to avoid the "drawback" of instability in the radial tire. Thus, one skilled in the art would not consider Mezzanotte in attempting to solve a problem relating to a flexible bag.

Thus, there is no teaching, suggestion or motivation to combine these references. Reconsideration of this rejection is respectfully submitted.

CONCLUSION

Based on the above, the Applicant respectfully submits the claimed invention is not rendered obvious by the references cited by the Examiner, and that they are in a condition for allowance. A two month extension fee is due and is include herewith. If any additional fees are due with this paper, please contact the undersigned.

Respectfully submitted,


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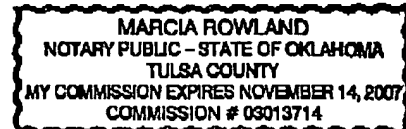
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GENERAL AFFIDAVIT.

State of Oklahoma
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BEFORE ME, the undersigned Notary,

Marcia Rowland
on this 22nd day of February, 2006,



personally appeared **Nicholas Rylander**,
known to me to be a credible person and of lawful age,
who being by me first duly sworn, on his oath, deposes and says:

At the request of Mr. Brent Capehart, representing Mr. Ray Skaggs in the Skaggs patent application for "Removable Flexible Panel," I have reviewed the U.S. Pat. No. 5,884,454 (Steinmetz) and considered whether it in combination with my own (Rylander) U.S. Pat. No. 4,749,011 would render the Skaggs application obvious, and herewith offer my opinions and comments.

The Steinmetz invention utilizes flexible metal **rods**, with either tapered or square ends, that are inserted in a plastic bag, either through existing passageways or by means of puncturing the bag in a weaving fashion. This design (and it seems to me to be dangerous to the user, especially the sharp point version) varies dramatically with either the Rylander patent or the Skaggs application. The Skaggs design utilizes flexible metal **straps** embedded in a plastic sheet which when rolled, inserted in an ordinary plastic trash bag and released, provides means to hold open the trash bag in a safe, efficient manner. I deem it not at all obvious to combine the designs of Rylander and Steinmetz to result in the Skaggs design.

That being said, I do take issue with the following statements in the Skaggs application (page 3, beginning sentence on line 4) referring to the Rylander U.S. Pat. No. 4,749,011: *"This device and other similar prior art devices do not have sufficient flexibility to return to its original shape, i.e. a flat planar body. Instead, these devices have a tendency to curl and assume a quasi-cylindrical shape."* The material mentioned in the Rylander patent, polycarbonate, has a strong memory to return to its original shape, and further, because the device has no "front" or "back" the usage would likely be in a random direction of curl and not always in only one direction that could possibly cause a deformation.

These statements are entirely of my own, and were authored without influence from any other party and given without remuneration, monetary or otherwise.

Nicholas Rylander
[signature of affiant]

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